

### **III. REMARKS/ARGUMENTS**

#### **A. Status of the Application**

Claims 1, 15 and 27 are amended. Claim 8 is cancelled. Thus, claims 1 – 7 and 9 – 39 are pending.

None of the amendments made herein is in response to the present rejection of the claims. Rather, the amendments made herein are made to enhance the Applicants' patent portfolio with claims of varying scope.

The amendments to claims 1, 15 and 27 are supported throughout the specification. For example, the amendments to claims 1, 15 and 27 to the effect that the acrylonitrile butadiene styrene polymer is in particulate form are supported at least by paragraph [0011] and original claims 8 – 11, 20 – 22 and 33 – 36. As another example, the amendments to claims 1, 15 and 27 to the effect that the cement, water and particulate acrylonitrile butadiene styrene are present in relative amounts effective to provide a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone are supported at least by paragraphs [0005], [0006], [0008], [0019] and [0022].

Reconsideration of this application in light of the following remarks is respectfully requested.

#### **B. Rejection of Claims 1 – 39 under 35 USC § 103(a) over Hashimoto**

Claims 1 – 39 stand rejected under 35 USC § 103(a) over U.S. Patent No. 4,174,230 to Hashimoto et al. ("Hashimoto"). This rejection is respectfully traversed.

Hashimoto describes a gypsum composition for use in the production of lightweight gypsum moldings (col. 1, lines 6 – 8). The gypsum composition requires "specific lightweight and spherical gypsums," allegedly developed by Hashimoto. (col. 1, lines 32 – 33). Such specific gypsums are composed of short fibers intertwined with each other. (col. 2, lines 41 - 42). Hashimoto also describes including certain water-emulsifiable organic polymers with the specific gypsums, one of which is described as an "acrylonitrile-butadiene-styrene copolymer." (col. 2, lines 46 – 48; col. 3, line 10). Hashimoto requires that such polymers be emulsified in water for use in the gypsum composition. (col. 3, lines 12 – 13).

To sustain the present rejection of claims 1 – 39 under 35 USC § 103(a), a prima facie case of obviousness must be established. MPEP § 2142 provides that a prima facie case of obviousness requires three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. In the present case, Hashimoto does not satisfy any of the criteria set forth in MPEP § 2142 with respect to independent claims 1, 15 and 27, and the claims dependent thereon.

1. Claim 1 and Claims 2 – 14

Claim 1 is drawn to a wellbore cement composition comprising cement, acrylonitrile butadiene styrene polymer in particulate form, and water. The cement, acrylonitrile butadiene styrene polymer, and water are present in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone.

Each of claims 2 – 14 depends directly or indirectly from claim 1, and therefore each includes at least the foregoing elements.

Hashimoto fails to disclose, motivate or suggest all of the limitations of claims 1 – 14. For example, Hashimoto fails to disclose, motivate or suggest a cement composition that includes acrylonitrile butadiene styrene polymer in particulate form, and that includes cement, acrylonitrile butadiene styrene polymer, and water are in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone.

Hashimoto draws a clear distinction between water-emulsifiable polymers and water-suspensible polymers, and then goes on to require the use of an emulsified polymer. (col. 3, lines 4 – 5 and 12 – 13). Thus, Hashimoto requires his acrylonitrile butadiene styrene polymer to be in an emulsified form, i.e., a latex form. (col. 3, lines 12 – 13). In contrast, claims 1 – 14 require the use of acrylonitrile butadiene styrene polymer in particulate form.

In addition, Hashimoto's gypsum compositions produce lightweight moldings with mechanical strength suited for this purpose. In contrast, claims 1 – 14 require a cement composition having cement, a particulate acrylonitrile butadiene styrene polymer, and water in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone.

A strength sufficient to achieve zonal isolation in a subterranean zone is entirely different from a strength sufficient for a piece of molding. As discussed in the present application, for example, at paragraphs [0004] and [0005], pressure and temperature in a subterranean zone have a direct effect on the ability of a cement sheath to maintain zonal isolation therein. The cement composition described by claims 1 – 14 requires relative amounts of cement, a particulate acrylonitrile butadiene styrene polymer, and water effective to provide such zonal isolation. Hashimoto fails to disclose, motivate or suggest such a composition.

For at least the foregoing reasons, Applicants submit that Hashimoto fails to teach or suggest all of the limitations of claims 1 – 14, and therefore fails to satisfy at least one of the elements of a prima facie case of obviousness. Accordingly, the entire prima facie case fails.

Hashimoto also fails to satisfy another element of the prima facie case, because there is no suggestion or motivation, either in Hashimoto or in the knowledge generally available to one of ordinary skill in the art of cement compositions, to modify Hashimoto so as to achieve the subject matter of claims 1 – 14.

For example, Hashimoto draws a clear distinction between water-emulsifiable polymers and water-suspensible polymers, and then goes on to require the use of an emulsified polymer. In view of Hashimoto's clear selection of the emulsified form of the polymer, there would be no motivation to use another form of polymer, and in particular, no motivation to use acrylonitrile butadiene styrene polymer in particulate form. In fact, the current Office Action fails to show or allege any source of motivation for such a modification.

In addition, Hashimoto's gypsum compositions are designed to produce lightweight moldings with mechanical strength suited for this purpose. Hashimoto provides no motivation to modify his composition such that it would have relative amounts of cement, a particulate acrylonitrile butadiene styrene polymer, and water effective to provide a cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean

zone. In addition, Hashimoto provides no motivation to modify his composition such that it is fluid enough for use at subterranean pressures and temperatures. Further still, the art of gypsum moldings and the art of wellbore cementing are so disparate that those of ordinary skill in the respective arts would not be motivated to make such a modification. In fact, the current Office Action fails to show or allege any source of motivation for this modification.

For at least the foregoing reasons, Applicants submit that there is no suggestion or motivation, either in Hashimoto or in the knowledge generally available to one of ordinary skill in the art, to modify Hashimoto so as to achieve the subject matter of claims 1 – 14. Accordingly, at least one of the elements of a prima facie case of obviousness cannot be satisfied, and therefore the entire prima facie case must fail.

Finally, Hashimoto fails to satisfy the last element of the prima facie case, namely, there is no reasonable expectation of success for achieving the subject matter of claims 1 – 14 from the disclosure of Hashimoto. In view of the fact that Hashimoto fails to teach or suggest all of the elements of claims 1 – 14, and that there is no suggestion or motivation to modify Hashimoto so as to achieve all of the elements of claims 1 – 14, there could be no reasonable expectation of success so as to satisfy the last element of the prima facie case.

Applicants further submit that claims 2 – 14 include additional subject matter that is also not disclosed, motivated or suggested by Hashimoto.

For example, each of claims 4 – 6 requires the particulate acrylonitrile butadiene styrene polymer to have specific amounts of either polybutadiene or styrene-butadiene. In addition, each of claims 8 – 11 requires particulate acrylonitrile butadiene styrene having a certain particle size. Besides the fact that what is claimed is a particulate polymer, while Hashimoto describes an emulsified polymer, Hashimoto is completely silent as to the amounts of acrylonitrile, butadiene, or styrene to include in his polymer emulsions.

Applicants respectfully disagree with and traverse the statement in the Office Action that “the amounts of polymer and the particulate size are conventional in cement compositions and are within the scope of the teachings of the prior art.” This statement is unsupported by the evidence required under MPEP §2144.03, namely, that there be some form of evidence in the record to support an assertion of common knowledge. (MPEP §2144.03 at p. 2100 – 143; *See also In re Lee*, 277 F.3d 1338, 1344 – 1345, USPQ2d 1430, 1434 – 1435 (Fed. Cir. 2002); *In re*

*Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) (holding that general conclusions concerning what is “basic knowledge” or “common sense” to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection)). If the foregoing position is to be maintained, Applicants respectfully request that the Examiner provide the evidence required to support it.

In view of the foregoing, Applicants respectfully request that the rejection of claims 1 – 14 under 35 USC §103(a) over Hashimoto be withdrawn.

2. Claim 15 and Claims 16 – 26

Claim 15 is drawn to a wellbore cement composition comprising cement, acrylonitrile butadiene styrene polymer present in particulate form in a range of 5% to 30% by weight of the cement, and water present in a range of about 38% to about 70% by weight of the cement. The cement, acrylonitrile butadiene styrene polymer and water are present in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone.

Each of claims 16 – 26 depends directly or indirectly from claim 15, and therefore each includes at least the foregoing elements.

As discussed above with respect to claims 1 – 14, Hashimoto fails to disclose, motivate or suggest a cement composition that includes acrylonitrile butadiene styrene polymer in particulate form, and that includes cement, acrylonitrile butadiene styrene polymer, and water in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone. In addition, Hashimoto fails to disclose, motivate or suggest a cement composition that includes acrylonitrile butadiene styrene polymer present in particulate form in a range of 5% to 30% by weight of the cement, and water present in a range of about 38% to about 70% by weight of the cement.

Also as discussed above, there is no suggestion or motivation, either in Hashimoto or in the knowledge generally available to one of ordinary skill in the art, to modify Hashimoto so as to achieve the subject matter that is lacking with respect to the claims.

Finally, since Hashimoto fails to teach or suggest all of the elements of claims 15 – 26, and there is no suggestion or motivation to modify Hashimoto so as to achieve all of the elements of claims 15 – 26, there could be no reasonable expectation of success for achieving the claimed subject matter.

Applicants further submit that claims 16 – 26 include additional subject matter that is also not disclosed, motivated or suggested by Hashimoto. For example, each of claims 17 – 19 requires the particulate acrylonitrile butadiene styrene polymer to have specific amounts of either polybutadiene or styrene-butadiene. In addition, each of claims 20 – 22 requires particulate acrylonitrile butadiene styrene having a certain particle size. Besides the fact that what is claimed is a particulate polymer, while Hashimoto describes an emulsified polymer, Hashimoto is completely silent as to the amounts of acrylonitrile, butadiene, or styrene to include in his polymer emulsions.

Applicants respectfully disagree with and traverse the statement in the Office Action that “the amounts of polymer and the particulate size are conventional in cement compositions and are within the scope of the teachings of the prior art.” This statement is unsupported by the evidence required under MPEP §2144.03, namely, that there be some form of evidence in the record to support an assertion of common knowledge. (MPEP §2144.03 at p. 2100-143). If the foregoing position is to be maintained, Applicants respectfully request that the Examiner provide the evidence required to support it.

In view of the foregoing, Applicants respectfully request that the rejection of claims 15 – 26 under 35 USC §103(a) over Hashimoto be withdrawn.

### 3. Claim 27 and Claims 28 – 39

Claim 27 is drawn to a wellbore cement composition comprising cement, acrylonitrile butadiene styrene polymer present in particulate form with a particle size of less than 1 mm, and water. The acrylonitrile butadiene styrene polymer, cement, and water are present in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone.

Each of claims 28 – 39 depends directly or indirectly from claim 27, and therefore each includes at least the foregoing elements.

As discussed above with respect to claims 1 – 14, Hashimoto fails to disclose, motivate or suggest a cement composition that includes acrylonitrile butadiene styrene polymer in particulate form, and that includes cement, acrylonitrile butadiene styrene polymer, and water in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone. In addition, Hashimoto fails to disclose, motivate or suggest a cement composition that includes acrylonitrile butadiene styrene polymer present in particulate form with a particle size of less than 1 mm.

Also as discussed above, there is no suggestion or motivation, either in Hashimoto or in the knowledge generally available to one of ordinary skill in the art, to modify Hashimoto so as to achieve the subject matter that is lacking with respect to the claims.

Finally, since Hashimoto fails to teach or suggest all of the elements of claims 27 – 39, and there is no suggestion or motivation to modify Hashimoto so as to achieve all of the elements of claims 27 – 39, there could be no reasonable expectation of success for achieving the claimed subject matter.

Applicants further submit that claims 26 – 39 include additional subject matter that is also not disclosed, motivated or suggested by Hashimoto. For example, each of claims 29 – 31 requires the particulate acrylonitrile butadiene styrene polymer to have specific amounts of either polybutadiene or styrene-butadiene. In addition, each of claims 34 – 36 requires particulate acrylonitrile butadiene styrene having a certain particle size. Besides the fact that what is claimed is a particulate polymer, while Hashimoto describes an emulsified polymer, Hashimoto is completely silent as to the amounts of acrylonitrile, butadiene, or styrene to include in his polymer emulsions.

Applicants respectfully disagree with and traverse the statement in the Office Action that “the amounts of polymer and the particulate size are conventional in cement compositions and are within the scope of the teachings of the prior art.” This statement is unsupported by the evidence required under MPEP §2144.03, namely, that there be some form of evidence in the record to support an assertion of common knowledge. (MPEP §2144.03 at p. 2100-143). If the foregoing position is to be maintained, Applicants respectfully request that the Examiner provide the evidence required to support it.

In view of the foregoing, Applicants respectfully request that the rejection of claims

27 – 39 over Hashimoto be withdrawn.

B. Rejection of Claims 1 – 39 under 35 USC § 103(a) over Meazey

Claims 1 – 39 stand rejected under 35 USC § 103(a) as being unpatentable over GB 1,093,094 to Meazey et al. (“Meazey”). This rejection is respectfully traversed.

Meazey describes a cement composition that includes cement and a terpolymer, in latex form, derived from units of butadiene, styrene and acrylonitrile. (p. 1, lines 33 – 41). Meazey describes using such compositions for brick-mortar, patching old concrete, and laying concrete floors. (p. 2, lines 8 – 13.)

To sustain the present rejection of claims 1 – 39 under 35 USC § 103(a), a prima facie case of obviousness must be established. MPEP § 2142 provides that a prima facie case of obviousness requires three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. In the present case, Meazey does not satisfy any of the criteria set forth in MPEP § 2142 with respect to independent claims 1, 15 and 27, and the claims dependent thereon.

1. Claim 1 and Claims 2 – 14

Claim 1 is drawn to a wellbore cement composition comprising cement, acrylonitrile butadiene styrene polymer in particulate form, and water. The cement, acrylonitrile butadiene styrene polymer, and water are present in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone.

Each of claims 2 – 14 depends directly or indirectly from claim 1, and therefore each includes at least the foregoing elements.

Meazey fails to disclose, motivate or suggest all of the limitations of claims 1 – 14. For example, Meazey fails to disclose, motivate or suggest a cement composition that includes acrylonitrile butadiene styrene polymer in particulate form, and that includes cement, acrylonitrile butadiene styrene polymer, and water are in relative amounts effective to provide



the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone.

Meazey describes use of a latex form of acrylonitrile butadiene styrene polymer. In contrast, claims 1 – 14 require the use of acrylonitrile butadiene styrene polymer in particulate form. In addition, Meazey's cement compositions are used for brick-mortar, patching old concrete, and laying concrete floors. In contrast, claims 1 – 14 require a cement composition having cement, a particulate acrylonitrile butadiene styrene polymer, and water in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone.

A strength sufficient to achieve zonal isolation in a subterranean zone is entirely different from a strength sufficient for brick-mortar, patching old concrete, and laying concrete floors. As discussed in the specification, for example, at paragraphs [0004] and [0005], pressure and temperature in a subterranean zone have a direct effect on the ability of a cement sheath to maintain zonal isolation therein. The cement composition described by claims 1 – 14 requires relative amounts of cement, a particulate acrylonitrile butadiene styrene polymer, and water sufficient to provide such zonal isolation. Meazey fails to disclose, motivate or suggest such a composition.

For at least the foregoing reasons, Applicants submit that Meazey fails to teach or suggest all of the limitations of claims 1 – 14, and therefore fails to satisfy at least one of the elements of a prima facie case of obviousness. Accordingly, the entire prima facie case fails.

Meazey also fails to satisfy another element of the prima facie case, because there is no suggestion or motivation, either in Meazey or in the knowledge generally available to one of ordinary skill in the art, to modify Meazey so as to achieve the subject matter of claims 1 – 14.

For example, Meazey requires a latex form of polymer. Thus, there would be no motivation to use another form of polymer, and in particular, no motivation to use acrylonitrile butadiene styrene polymer in particulate form. In fact, the current Office Action fails to show or allege any source of motivation for this modification.

In addition, Meazey's cement compositions are designed for brick-mortar, patching old concrete, and laying concrete floors. Meazey provides no motivation to modify his composition such that it would have relative amounts of cement, a particulate acrylonitrile butadiene styrene

polymer, and water to provide a cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone. The current Office Action also fails to show or allege any source of motivation for this modification.

For at least the foregoing reasons, Applicants submit that there is no suggestion or motivation, either in Meazey or in the knowledge generally available to one of ordinary skill in the art, to modify Meazey so as to achieve the subject matter of claims 1 – 14. Accordingly, at least one of the elements of a prima facie case of obviousness cannot be satisfied, and therefore the entire prima facie case must fail.

Finally, Meazey fails to satisfy the last element of the prima facie case, namely, there is no reasonable expectation of success for achieving the subject matter of claims 1 – 14 from the disclosure of Meazey. Since Meazey fails to teach or suggest all of the elements of claims 1 – 14, and there is no suggestion or motivation to modify Meazey so as to achieve all of the elements of claims 1 – 14, there could be no reasonable expectation of success so as to satisfy the last element of the prima facie case.

Applicants further submit that claims 2 – 14 include additional subject matter that is also not disclosed, motivated or suggested by Meazey.

For example, each of claims 4 – 6 requires the particulate acrylonitrile butadiene styrene polymer to have specific amounts of either polybutadiene or styrene-butadiene. In addition, each of claims 8 – 11 requires particulate acrylonitrile butadiene styrene having a certain particle size. Besides the fact that what is claimed is a particulate polymer, while Meazey describes a latex polymer, Meazey does not describe a polymer having the amounts of either polybutadiene or styrene-butadiene as recited in claims 4 – 6.

Applicants respectfully disagree with and traverse the statement in the Office Action that “the amounts of polymer and the particulate size are conventional in cement compositions and are within the scope of the teachings of the prior art.” This statement is unsupported by the evidence required under MPEP §2144.03, namely, that there be some form of evidence in the record to support an assertion of common knowledge. (MPEP §2144.03 at p. 2100 – 143; *See also In re Lee*, 277 F.3d 1338, 1344 – 45, USPQ2d 1430, 1434 – 35 (Fed. Cir. 2002); *In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) (holding that general conclusions concerning what is “basic knowledge” or “common sense” to one of ordinary skill in

the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection)). If the foregoing position is to be maintained, Applicants respectfully request that the Examiner provide the evidence required to support it.

In view of the foregoing, Applicants respectfully request that the rejection of claims 1 – 14 under 35 USC §103(a) over Meazey be withdrawn.

2. Claim 15 and Claims 16 – 26

Claim 15 is drawn to a wellbore cement composition comprising cement, acrylonitrile butadiene styrene polymer present in particulate form in a range of 5% to 30% by weight of the cement, and water present in a range of about 38% to about 70% by weight of the cement. The cement, acrylonitrile butadiene styrene polymer and water are present in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone.

Each of claims 16 – 26 depends directly or indirectly from claim 15, and therefore each includes at least the foregoing elements.

As discussed above with respect to claims 1 – 14, Meazey fails to disclose, motivate or suggest a cement composition that includes acrylonitrile butadiene styrene polymer in particulate form, and that includes cement, acrylonitrile butadiene styrene polymer, and water in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone. In addition, Meazey fails to disclose, motivate or suggest a cement composition that includes acrylonitrile butadiene styrene polymer present in particulate form in a range of 5% to 30% by weight of the cement, and water present in a range of about 38% to about 70% by weight of the cement.

Also as discussed above, there is no suggestion or motivation, either in Meazey or in the knowledge generally available to one of ordinary skill in the art, to modify Meazey so as to achieve the subject matter that is lacking with respect to the claims.

Finally, since Meazey fails to teach or suggest all of the elements of claims 15 – 26, and there is no suggestion or motivation to modify Meazey so as to achieve all of the elements of

claims 15 – 26, there could be no reasonable expectation of success for achieving the claimed subject matter.

Applicants further submit that claims 16 – 26 include additional subject matter that is also not disclosed, motivated or suggested by Meazey. For example, each of claims 17 – 19 requires the particulate acrylonitrile butadiene styrene polymer to have specific amounts of either polybutadiene or styrene-butadiene. In addition, each of claims 20 – 22 requires particulate acrylonitrile butadiene styrene having a certain particle size. Besides the fact that what is claimed is a particulate polymer, while Meazey describes a latex polymer, Meazey does not describe a polymer having the amounts of either polybutadiene or styrene-butadiene as recited in claims 17 – 19.

Applicants respectfully disagree with and traverse the statement in the Office Action that “the amounts of polymer and the particulate size are conventional in cement compositions and are within the scope of the teachings of the prior art.” This statement is unsupported by the evidence required under MPEP §2144.03, namely, that there be some form of evidence in the record to support an assertion of common knowledge. (MPEP §2144.03 at p. 2100-143. If the foregoing position is to be maintained, Applicants respectfully request that the Examiner provide the evidence required to support it.

In view of the foregoing, Applicants respectfully request that the rejection of claims 15 – 26 under 35 USC §103(a) over Meazey be withdrawn.

### 3. Claim 27 and Claims 28 – 39

Claim 27 is drawn to a wellbore cement composition comprising cement, acrylonitrile butadiene styrene polymer present in particulate form with a particle size of less than 1 mm, and water. The acrylonitrile butadiene styrene polymer, cement, and water are present in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone.

Each of claims 28 – 39 depends directly or indirectly from claim 27, and therefore each includes at least the foregoing elements.

As discussed above with respect to claims 1 – 14, Meazey fails to disclose, motivate or suggest a cement composition that includes acrylonitrile butadiene styrene polymer in particulate

form, and that includes cement, acrylonitrile butadiene styrene polymer, and water in relative amounts effective to provide the cement composition with a strength sufficient to achieve zonal isolation in a wellbore penetrating a subterranean zone. In addition, Meazey fails to disclose, motivate or suggest a cement composition that includes acrylonitrile butadiene styrene polymer present in particulate form with a particle size of less than 1 mm.

Also as discussed above, there is no suggestion or motivation, either in Meazey or in the knowledge generally available to one of ordinary skill in the art, to modify Meazey so as to achieve the subject matter that is lacking with respect to the claims.

Finally, since Meazey fails to teach or suggest all of the elements of claims 27 – 39, and there is no suggestion or motivation to modify Meazey so as to achieve all of the elements of claims 27 – 39, there could be no reasonable expectation of success for achieving the claimed subject matter.

Applicants further submit that claims 26 – 39 include additional subject matter that is also not disclosed, motivated or suggested by Meazey. For example, each of claims 29 – 31 requires the particulate acrylonitrile butadiene styrene polymer to have specific amounts of either polybutadiene or styrene-butadiene. In addition, each of claims 34 – 36 requires particulate acrylonitrile butadiene styrene having a certain particle size. Besides the fact that what is claimed is a particulate polymer, while Meazey describes a latex polymer, Meazey does not describe a polymer having the amounts of either polybutadiene or styrene-butadiene as recited in claims 29 – 31.

Applicants respectfully disagree with and traverse the statement in the Office Action that “the amounts of polymer and the particulate size are conventional in cement compositions and are within the scope of the teachings of the prior art.” This statement is unsupported by the evidence required under MPEP §2144.03, namely, that there be some form of evidence in the record to support an assertion of common knowledge. (MPEP §2144.03 at p. 2100-143). If the foregoing position is to be maintained, Applicants respectfully request that the Examiner provide the evidence required to support it.

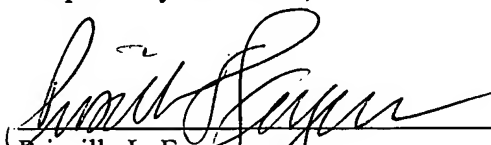
In view of the foregoing, Applicants respectfully request that the rejection of claims 27 – 39 over Meazey be withdrawn.

Conclusion

Claims 1 – 7 and 9 – 39 are now pending in the present application. In view of the foregoing remarks, allowance of claims 1 – 7 and 9 – 39 is respectfully requested. The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

Date: June 1, 2006

  
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